IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEPHEN BUSHANSKY, derivatively on behalf of Education Management Corp,
 	
       Plaintiff,
 	
       v.
 	
 TODD S. NELSON, JOHN R. McKERNAN, JR., PAUL J. SALEM, SAMUEL C. COWLEY, ADRIAN M. JONES, PETER O. WILDE, and LEO F. MULLIN,
 	
       Defendants,
 	
       and
 	
 EDUCATION MANAGEMENT CORP.,
 	
       Nominal Defendant.
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	) **Civil Action No. 2:12-cv-01101-TFM**
	
	      Judge Terrence F. McVerry
	
	      Electronically Filed

STIPULATION AND [PROPOSED] ORDER OF VOLUNTARY DISMISSAL

WHEREAS, by letter dated August 23, 2010, Plaintiff Stephen Bushansky, a putative shareholder of Education Management Corporation ("EDMC" or the "Company"), made a demand on EDMC's Board of Directors ("EDMC Board") that the EDMC Board investigate the company's policies regarding student recruiting, vocational training, and cost structure, implement internal controls and revisions to its corporate governance practices and procedures, and alleged the directors breached their fiduciary breaches;

WHEREAS, the EDMC Board formed a Special Litigation Committee ("SLC") in November 2010 to investigate the claims in Plaintiff's demand letter;

WHEREAS, following an investigation of the factual and legal issues raised in Plaintiff's demand letter, the SLC produced a 105-page report that concluded the Company had a robust set of internal controls designed to identify any deceptive and questionable practices; that these controls were supported by a properly designed corporate governance structure; and that the Company's directors had not breached any fiduciary duty;

WHEREAS, the SLC concluded that it would not be in the best interest of the Company or its shareholders to take the actions requested in Plaintiff's demand letter and determined to reject the demand;

WHEREAS, on May 4, 2011, the SLC advised Plaintiff in writing of its determination to reject his demand;

WHEREAS, on August 3, 2012, Plaintiff filed the complaint in this action (the "Complaint"), asserting a derivative claim on behalf of the Company against certain directors and officers of the Company for breach of fiduciary duty (ECF No. 1);

WHEREAS, on October 19, 2012, the individual Defendants Todd Nelson, John McKernan Jr., Paul Salem, Samuel Cowley, Adrian Jones, Peter Wilde, and Leo Mullin moved to stay this action or alternatively dismiss Plaintiff's Complaint (ECF No. 26), and the SLC and the Company as a nominal defendant moved to dismiss the Complaint (ECF Nos. 27 and 29);

WHEREAS, by Order dated August 5, 2013, this Court granted the motion of the individual Defendants to stay this action (ECF No. 58);

WHEREAS, in granting this motion, the Court recognized that this case paralleled a previously filed, then-pending, state court action, *Oklahoma Law Enforcement Retirement System v. Nelson et al.*, Case No. GD-12-008785 (Ct. Comm. Pleas Allegheny County) (Wettick, J.) ("*OLERS*"), and held that "Judge Wettick's final decision in the OLERS Action will have significant, and perhaps dispositive, impact on this litigation because the issues are virtually identical," (ECF No. 58 at 2-3);

WHEREAS, on August 25, 2015, the Court of Common Pleas ruled in favor of all defendants and dismissed all claims in *OLERS*, including allegations about incentive compensation and job placement statistics, (ECF No. 59-1);

WHEREAS, the decision in *OLERS* came after significant proceedings lasting over two years, which included multiple expert reports from both plaintiff and the Special Litigation Committee, discovery related to the issues raised in the *OLERS* complaint, extensive briefing, and multiple hearings;

WHEREAS, on August 31, 2015, Defendants filed a motion for relief from the stay and requested a decision on the pending motions to dismiss (ECF Nos. 26, 27 and 29), arguing that the decision in *OLERS* precluded Plaintiff's lone claim in this matter (ECF No. 59 at 3-4);

WHEREAS, in light of the foregoing, Plaintiff has decided to voluntarily dismiss this action in light of, *inter alia,* the decision in *OLERS* and solely upon Plaintiff's conclusion that, under governing law, there is no reasonable basis to proceed;

WHEREAS, Defendants do not oppose Plaintiff's decision to voluntarily dismiss this action;

WHEREAS, Plaintiff and Defendants represent that neither Plaintiff nor his counsel has received or will receive, directly or indirectly, any payment or other benefit in exchange for dismissal of this action;

WHEREAS, the parties agree that each side will bear its own costs and attorneys' fees, which is in the best interest of the Company to ensure timely and efficient resolution of this matter;

IT IS HEREBY STIPULATED AND ORDERED that, pursuant to Federal Rules of

Civil Procedure 23.1(c) and 41(a)(1)(A)(ii), this action is hereby dismissed with prejudice as to

Plaintiff and without prejudice as to any other shareholder.

BY THE COURT:

s/ Terrence F. McVerry
U.S. Sr. District Judge Terrence F. McVerry

Date: September 22, 2015

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Counsel for Leo F. Mullin and Paul J. Salem, in
their capacity as members of a duly formed
Litigation Committee of the Board of Directors
of Education Management Corporation

Respectfully submitted,

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